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Attorneys for Nina Afrasiabi

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**NINA AFRASIABI, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED**

PLAINTIFF,
v.

SRA ASSOCIATES, INC.,
DEFENDANT.

Case No: '11CV0311 H JMA

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT TO
THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227
ET SEQ.**

Jury Trial Demanded

INTRODUCTION

- 1
- 2 1. Nina Afrasiabi, (Plaintiff), through Plaintiff's attorneys, brings this class
- 3 action for damages, injunctive relief, and any other available legal or
- 4 equitable remedies resulting from the illegal actions of SRA Associates, Inc.,
- 5 ("Defendant") in negligently, and/or willfully contacting Plaintiff on
- 6 Plaintiff's cellular telephone, in violation of the Telephone Consumer
- 7 Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading
- 8 Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to
- 9 herself and her own acts and experiences, and, as to all other matters, upon
- 10 information and belief, including investigation conducted by her attorneys.

JURISDICTION AND VENUE

- 11
- 12 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1332(d)(2) because
- 13 Plaintiff seeks relief on behalf of a national class action, which will result in
- 14 at least one class member belonging to a different state than that of
- 15 Defendant. Plaintiff also seeks up to \$1,500 in damages for each call in
- 16 violation of the TCPA, which, when aggregated among a proposed class
- 17 number in tens of thousands, exceeds the \$5,000,000 threshold for federal
- 18 court jurisdiction. Therefore, both elements of diversity jurisdiction under the
- 19 Class Action Fairness Act of 2005 ("CAFA") are present and this Court has
- 20 jurisdiction.
- 21 3. Venue is proper in the United States District Court for the Southern District of
- 22 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant
- 23 does business within the State of California and the County of San Diego.

PARTIES

- 24
- 25 4. Plaintiff is, and all times mentioned herein was, an individual citizen and
- 26 resident of the State of California. Plaintiff is, and all times mentioned herein
- 27 was, "person(s)" as defined by 47 U.S.C. §153 (10).
- 28

1 5. Defendant is located and does business in the City of San Diego, in the State
2 of California.

3 6. Defendant is a person who uses an instrumentality of interstate commerce or
4 the mails in a business the principal purpose of which is the collection of
5 debts, or who regularly collects or attempts to collect, directly or indirectly,
6 debts owed or due or asserted to be owed or due another and is therefore a
7 debt collector. At all times mentioned herein, Defendant were and is a
8 corporation and “person(s)” as defined by 47 U.S.C. § 152 (10).

9 **FACTUAL ALLEGATIONS**

10 7. At all times relevant, Plaintiff was an individual residing within the State of
11 California. Plaintiff is, and at all times mentioned herein was, a “person” as
12 defined by 47 U.S.C. § 153 (10).

13 8. Defendant is, and at all times mentioned herein was, a corporation and a
14 “person,” as defined by 47 U.S.C. § 153 (10).

15 9. At all times relevant Defendant conducted business in the State of California
16 and in the County of San Diego.

17 10. Plaintiff leased a vehicle, a Mazda CX-7, on or about January 2008 from
18 Tustin Mazda.

19 11. On information and belief, Mazda American Credit financed the lease of
20 Plaintiff’s vehicle, subsequent to lease by Tustin Mazda.

21 12. Plaintiff made all the regularly scheduled lease payments to the Mazda
22 American Credit.

23 13. In or about February or March 2010, Plaintiff returned the vehicle the lease
24 vehicle, as the lease had expired.

25 14. Subsequently, in March 2010, the Tustin Mazda, directly and/or through its
26 agent, Mazda American Credit began to attempt to collected money for
27 alleged cosmetic damage to the vehicle.
28

- 1 15. Plaintiff did not incur any alleged damage to the vehicle, disputed this fact
- 2 with all entities, including Tustin Mazda and/or Mazda American Credit, and
- 3 refused to pay.
- 4 16. On or about June 10, 2010, the alleged debt was assigned, placed, or
- 5 otherwise transferred, to the Reese Law Group for collection.
- 6 17. After the Reese Law Group was unsuccessful in collecting the alleged debt
- 7 (which was not even owed), the Reese Law Group, and/or Tustin Mazda, and/
- 8 or Mazda American Credit, transferred and/or assigned the same delinquent
- 9 account to Defendant.
- 10 18. Starting on or about September, 2010, Defendant used an autodialer and/or
- 11 prerecorded voice message to telephone Plaintiff's cellular phone in
- 12 connection with collection of the alleged debt.
- 13 19. Plaintiff never provided her new cellular telephone to Defendant, Tustin
- 14 Mazda and/or Mazda American Credit and/or the Reese Law Group, as she
- 15 did not even have her current cellular telephone number at the time she
- 16 entered into the lease.
- 17 20. Plaintiff never provided implied and/or express consent in any manner for
- 18 Tustin Mazda, Mazda American Credit, the Reese Law Group and/or
- 19 Defendant to contact her on her cellular telephone with an autodialer and/or
- 20 prerecorded voice message.
- 21 21. These automated telephone calls to Plaintiff's cellular telephone using an
- 22 automated dialer and/or pre-recorded message continued for two or three
- 23 months.
- 24 22. On all these occasions over numerous months, all prior to the date this
- 25 Complaint was filed, but sometime after four years prior to the date this
- 26 Complaint was filed, Defendant contacted Plaintiff on Plaintiff's cellular
- 27 telephone via an "automatic telephone dialing system," as defined by 47
- 28 U.S.C. § 227 (a)(1).

23. During these telephone calls Defendant used “an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227 (b)(1)(A).

24. The telephone number Defendant called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

25. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

26. Plaintiff did not provide prior express consent to receive calls on Plaintiff’s cellular telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

27. These telephone calls by Defendant violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

28. Plaintiff brings this action on behalf of herself and on behalf of and all others similarly situated (“the Class”).

29. Plaintiff represents, and is a member of, the Class, consisting of all persons within the United States who received any telephone call from Defendant or its agent to said person’s cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice, which call was not made for emergency purposes or with the recipient’s prior express consent, within the four years prior to the filing of this Complaint.

30. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the tens of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

31. Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and the Class members via their cellular telephones thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular

1 telephone time for which Plaintiff and the Class members previously paid, by
2 having to retrieve or administer messages left by Defendant during those
3 illegal calls, and invading the privacy of said Plaintiff and the Class members.
4 Plaintiff and the Class members were damaged thereby.

5 32. This suit seeks only damages and injunctive relief for recovery of economic
6 injury on behalf of the Class and it expressly is not intended to request any
7 recovery for personal injury and claims related thereto. Plaintiff reserves the
8 right to expand the Class definition to seek recovery on behalf of additional
9 persons as warranted as facts are learned in further investigation and
10 discovery.

11 33. The joinder of the Class members is impractical and the disposition of their
12 claims in the Class action will provide substantial benefits both to the parties
13 and to the court. The Class can be identified through Defendant's records or
14 Defendant's agents' records.

15 34. There is a well-defined community of interest in the questions of law and fact
16 involved affecting the parties to be represented. The questions of law and fact
17 to the Class predominate over questions which may affect individual Class
18 members, including the following:

- 19 a. Whether, within the four years prior to the filing of this Complaint,
20 Defendant made any call (other than a call made for emergency
21 purposes or made with the prior express consent of the called party)
22 to a Class member using any automatic telephone dialing system or
23 an artificial or prerecorded voice to any telephone number assigned
24 to a cellular telephone service.
- 25 b. Whether Plaintiff and the Class members were damaged thereby, and
26 the extent of damages for such violation; and
- 27 c. Whether Defendant should be enjoined from engaging in such
28 conduct in the future.

35. As a person that received numerous calls using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

36. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

37. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

38. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendant is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

39. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

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FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 *ET SEQ.*

40. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

42. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and The Classes are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

43. Plaintiff and the The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 *ET SEQ.*

44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

46. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and each of the The Classes are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

47. Plaintiff and the The Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Subclass member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION
OF THE TCPA, 47 U.S.C. § 227 *ET SEQ.***

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class and Subclass member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

Hyde & Swigart

Date: 2/15/11

By: /s/ Joshua Swigart
Joshua B. Swigart
Attorneys for Plaintiff

HYDE & SWIGART
San Diego, California

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nina Afrasiabi, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart 411 Camino Del Rio South Suite 301
San Diego, CA 92108 619.233.7770

DEFENDANTS

SRA Associates, Inc.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'11CV0311 H JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227 et seq

Brief description of cause:
ICPA

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
Exceeds \$5 Million

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/15/11

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE